

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RODNEY DUMAS,

Defendant-Appellant.

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UNPUBLISHED

June 16, 2000

No. 208829

Wayne Circuit Court

Criminal Division

LC No. 91-007307

Before: Markey, P.J., and Gribbs and Griffin, JJ.

PER CURIAM.

Defendant was convicted by a jury, on retrial,<sup>1</sup> of first-degree felony-murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment without parole. He appeals by right. We affirm.

Defendant first argues that the trial court erred by failing to instruct the jury on the elements of the underlying felony to the charged offense of felony murder. Defendant did not preserve this issue with an appropriate objection at trial. Accordingly, to avoid forfeiture of this unpreserved issue, defendant must demonstrate plain error that affected substantial rights, i.e., the error affected the outcome of the proceedings. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999). The record indicates that defendant's theory of the case was misidentification. That fact that the victim was shot during an attempted robbery was not a contested issue at trial. Under these circumstances, the trial court's failure to instruct on the elements of the underlying felony was not error requiring reversal. *People v Sanders (On Remand)*, 190 Mich App 389, 392-393; 476 NW2d 157 (1991).

Defendant also claims that he was denied a fair trial because of the admission of other-acts evidence, contrary to MRE 404(b), and that defense counsel was ineffective for failing to move to strike the other-acts testimony at the close of the prosecutor's case-in-chief. We disagree. We conclude that the prosecutor met the foundational requirements for admission under MRE 404(b), by showing by a

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<sup>1</sup> Defendant was originally convicted of first-degree felony-murder in 1992, but his conviction was reversed by our Supreme Court because of instructional error. *People v Dumas*, 454 Mich 390; 563 NW2d 31 (1997).

preponderance of evidence that defendant participated in the other acts in question. *People v Crawford*, 458 Mich 376, 383-385; 582 NW2d 785 (1998). Moreover, the evidence was relevant to show that defendant had knowledge that Smith was armed with a gun, a proper noncharacter purpose. Accordingly, the trial court did not abuse its discretion in admitting the evidence under MRE 404(b)(1). *Crawford, supra* at 383. Further, because the evidence was properly admitted, defense counsel was not ineffective for failing to object.

We affirm.

/s/ Jane E. Markey

/s/ Roman S. Gibbs

/s/ Richard Allen Griffin